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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,371

10/24/2003

Kenneth S. Zukor

FL/140

2596

28596 7590 04/28/2009  
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EXAMINER

LU, JIPING

ART UNIT

PAPER NUMBER

3743

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/693,371	<b>Applicant(s)</b> ZUKOR ET AL.	
	<b>Examiner</b> Jiping Lu	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/9/08 & 1/15/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-14, 27-30, 32 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14, 27-30, 32, 37-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Claim/Amendment status***

1. A complete responsive amendment filed on 12/9/08 under 37 CFR 1.111 has been entered. Claims 1-5, 8-14, 27-30, 32 and newly added claims 37-39 are now in the case. Claims 6, 7, 15-26, 31 and 33-36 have been cancelled.

The Supplemental Amendment filed on 1/15/2009 will not be entered for the following reasons: (1) Entry of the supplemental amendment is not a matter of right; (2) The supplemental amendment was not timely filed. It was filed outside of six months of statutory period for response to the original Office action of June 11, 2008. By adding additional new independent claims 40-42 can not be consider as “supplemental” amendment to clarify or complete other issues. The applicant can not request further extension of time for submitting any supplemental amendment outside six months time period from June 11, 2008. In the Interview Record, the examiner did not invite any Supplemental Amendment, except indicated that the examiner will consider such amendment when properly filed and in due course. The applicant should not have waited until after six months from the Office action mailed on June 11, 2008 to seek an interview with the examiner. Under the circumstances, the Supplemental Amendment of 1/15/2009 will not be entered.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claims 1-2, 4-5, 8-9, 11-12, 27-29, 32 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Bender (U. S. Pat. 3,474,543).

Bender shows a removable cap assembly comprising a cap 31 comprising a housing 31 adjoined to a conformable section 33 having an internal recess (within 33) for engaging with stopper 30 and for sealing around a container opening (at 23, see figure 2), and a vapor path opening 25 (see Figures 3-5) for vapor passage between the container and an external atmosphere, a venting media (top portion of cap 31, 33) oriented in the vapor passage/path forming a barrier isolating the container from the external atmosphere, a stopper 30 seated in a first position within the cap 31 adjacent to the recess. The cap 31 and venting media (see Fig. 5) are able to be removed from the stoppered container 19. The stopper 30 is movable between open and shut positions for allowing passage of vapor. A top covering or lid 41 is also provided. The cap 31 has a top (at 71) and a bottom (at 32). The cap 31 has a housing with a sealing perimeter at the top (at 71) of the cap 31 adjoined to a conformable section. The venting media (top portion of 33) oriented in the vapor path and attached to the sealing perimeter at the top of the cap 31 and external to the container opening (at 23). As for the limitations, “is sealed to the venting media”, “is sealed to the media via a heat seal/a gasket seal” in claim 29 they are viewed as functional or intended use limitations. As MPEP 2114 states, “[a] claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim”. In this case, the limitations above do not add any structural limitations to the claim and Bender et al. discloses all the structural limitations.

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***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 3, 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender (U. S. Pat. 3,474,543).

The cap assembly of Bender as above includes all that is recited in claims 3, 10, 17, 30 except for the cap material and a gasket between the top covering and the venting media. With regard to the claimed single material in claims 3, 10, 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose any kind of desired material for cap in order to pursue an intended use, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. With regard to claim 30, examiner takes official notice that it is well known in the sealing art to use gasket for sealing purpose.

6. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender (U. S. Pat. 3,474,543) in view of Jones (U. S. Pat. 5,522,155). 6, 7, 15-26, 31 and 33-36

The cap assembly of Bender as above includes all that is recited in claims 3,10, 13-14 except for the material of cap and venting media. Jones teaches a cap assembly with a single material cap 90 and a venting media comprising hydrophobic material or expanded polytetrafluoroethylene material (col. 3, line 60 to col. 4, line 15) same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap assembly of Bender to include a single material cap in order to facilitate

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the manufacture and to substitute the venting media comprising hydrophobic material or expanded polytetrafluoroethylene material of Jones for the venting media of Bender in order to improve the resistance to water penetration.

### ***Response to Arguments***

7. Applicant's arguments filed on 12/9/08 with respect to claims have been considered but not persuasive to overcome the rejection. First, it is noted that the applicant has broadened the previously present claims. Newly amended claim 1 has been broadened. The deleted subject matter of the claim 1 has been re-written as new dependent claims 37-39. Therefore, the previous rejection of claims will remain unchanged. The broad claims presented fail to structurally define over the prior art references. The applicant is requested to point out any limitations from the broad claims that the prior art references do not teach or suggest. Second, on pages 6-7 of the Remarks, the applicant argues that 35 USC 102 rejection is improper. However, it is the examiner's position that broad claims 1-2, 4-5, 8-9, 11-12, 27-29, 32 and 37-39 remain anticipated by the Bender patent (U.S. Pat. 3,474,543) for reasons as set forth in the rejection above. Bender shows a removable cap assembly comprising a cap 31 and a housing 31 adjoined to a conformable section 33 having an internal recess (within 33) for engaging with stopper 30 and for sealing around a container opening (at 23, see figure 2), and a vapor path opening 25 (see Figures 3-5) for vapor passage between the container and an external atmosphere, a venting media (at top portion of cap 31, 33) oriented in the vapor passage/path forming a barrier isolating the container from the external atmosphere, a stopper 30 seated in a first position within the cap 31 adjacent to the recess. The cap 31 and venting media (see Fig. 5)

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are able to be removed from the stoppered container 19. The stopper 30 is movable between open and shut positions for allowing passage of vapor. A top covering or lid 41 is also provided. The cap 31 has a top (at 71) and a bottom (at 32). The cap 31 has a housing with a sealing perimeter at the top (at 71) of the cap 31 adjoined to a conformable section. The venting media (top portion of 33) oriented in the vapor path and attached to the sealing perimeter at the top of the cap 31 and external to the container opening (at 23). Each and every element is shown by the Bender patent. The applicant simply failed to structurally amend the broad claims to define over the prior art references. Finally, on pages 7-8 of the Remarks, the applicant argues that secondary references do not obviate the deficiencies of the dependent claims. The examiner disagrees because in view of the combined teaching of the prior art references, one skilled in the art would have found it to be obvious to combine because the results would have been predictable (see KSR International Co. v. Teleflex, Inc. 82 USPQ 2d 1385 (2007)).

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KENNETH RINEHART can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jiping Lu/  
Primary Examiner  
Art Unit 3743

J. L.